

DEPARTMENT OF CORPORATIONS
California's Investment and Financing Authority

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**NOTICE OF CIVIL CODE CHANGES IMPACTING FINANCE LENDERS AND
MORTGAGE BANKERS**

SB 1137 (Chap. 69, Stats. 2008)
Civil Code Sections 2923.5, 2923.6, 2924.8, and 2929.3
Code of Civil Procedure Section 1161b

Senate Bill 1137 (Perata), signed by Governor Schwarzenegger on July 8, 2008, requires lenders to contact homeowners and explore restructuring options before initiating the foreclosure process. SB 1137 also provides tenants with increased time to move out of a foreclosed property, and requires owners to maintain vacant foreclosed properties. Its provisions apply to owner-occupied residential loans made between January 1, 2003 and December 31, 2007.

The bill became effective immediately upon the Governor's signature and will remain in effect until January 1, 2013. However, as identified below, certain provisions of the bill did not become operative until 60 days after the effective date of July 8, 2008.

The following is a summary of the main provisions of SB 1137.

SB 1137 Establishes Contact & Due Diligence Requirements for Mortgagees
(Operative 60 days after July 8, 2008)

SB 1137 requires a mortgagee, beneficiary or authorized agent (hereinafter "mortgagee") to contact or attempt to contact a borrower, in person or by phone, at least 30 days prior to the filing of a default notice.

During the initial contact the mortgagee must:

- Assess the borrower's financial situation and explore options for the borrower to avoid foreclosure, or inform the borrower that he or she has the right to request a second meeting to do so;
- Schedule a second meeting within 14 days, if requested; and
- Provide the borrower with a toll-free number for HUD-certified counseling agencies.

For purposes of the meeting, the following requirements are applicable:

- The meeting may occur by telephone;
- The participants may include a mortgagee's loss mitigation staff as well as a mortgagor, trustor, or a designated housing counselor, attorney or other advisor;

- A borrower may designate a HUD-certified housing counseling agency, attorney, or other advisor to discuss with the mortgagee, on the borrower's behalf, options for the borrower to avoid foreclosure;
- Any such contact made at the direction of the borrower would satisfy the contact requirement; and
- The borrower must approve any modification or workout plan offered at the meeting.

A Notice of Default may be filed without making contact with a borrower if a mortgagee used due diligence to contact the borrower, which requires that the mortgagee do the following:

- Send a first-class letter that includes a HUD toll-free telephone number.
- Attempt to contact a borrower by phone at least three times at different hours and on different days, using the primary number on file, and send a certified letter with return receipt requested, if there is no reply to the calls within two weeks.
- Provide the borrower with a means to contact the mortgagee in a timely manner, including a toll-free number that will provide access to a live representative during business hours.
- Post a prominent link on the homepage of the mortgagee's website that includes:
 - A list of options that borrowers can use to help avoid foreclosure and instructions on how to review them;
 - A list of financial documents that the borrower should be prepared to present to the mortgagee when discussing options to foreclosure;
 - A toll-free number for the borrower to use to discuss options with the mortgagee; and
 - A toll-free number to locate HUD-certified counseling agencies.

The contact requirements do not apply if the borrower surrendered the property by submitting a letter or the keys to the mortgagee, contracted with an entity to avoid his or her contractual obligations as a mortgagee, or filed for bankruptcy, where the proceedings are not final.

SB 1137 Requires a Mortgagee to File a Declaration of Contact with the Borrower

(Operative 60 days after July 8, 2008)

Prior to the filing a Notice of Default, a mortgagee must include a declaration regarding contact with a borrower in a default filing, that indicates the mortgagee has contacted the borrower, attempted with due diligence to contact the borrower, or received the surrendered property from the borrower.

If a mortgagee filed a Notice of Default before SB 1137 was enacted (July 8, 2008) and did not file a Notice of Rescission, a mortgagee must include a declaration regarding contact with a borrower in a Notice of Sale filing, that either:

- States that the borrower was contacted to assess his or her financial situation and to explore options to avoid foreclosure; or

- Sets forth the mortgagee's efforts, if any, to contact the borrower if contact was not made.

SB 1137 Requires a Mortgagee to Send a Notice to Resident of Property Being Foreclosed

(Operative 60 days after July 8, 2008)

At the time of filing the Notice of Sale, a mortgagee must mail a notice addressed to the resident of the property that informs the resident about the pending foreclosure process, and suggests that the individual seek assistance as to his or her rights to live in the residence.

The notice must be written in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean. A notice translated into the required languages is available on the Department's web site at: http://www.corp.ca.gov/FSD/pdf/Notice_of_Sale.pdf.

This notice is only required if the billing address for the mortgage note is different than the property address.

SB 1137 Provides for the Maintenance of Foreclosed Properties

(Operative July 8, 2008)

After acquiring a foreclosed property, SB 1137 requires an owner of vacant residential foreclosed property to maintain the property or be subject to civil penalties of up to \$1,000 per day.

"Failure to maintain a property" is defined as the failure to adequately care for a property, including but not limited to, allowing excessive foliage growth, allowing trespassers, and permitting growth of mosquito larvae.

SB 1137 Increases the Timeframe for a Resident to Vacate a Foreclosed Property

(Operative July 8, 2008)

If a new owner is evicting a tenant from a property after a foreclosure, SB 1137 requires the owner to give the tenant a 60-day Notice to Quit, rather than the 30-day notice required in most other situations.

The 60-day notice requirement is not applicable if a party to the note is the party being evicted from a property.

The notice is for informational purposes only, to ensure licensees are aware of the requirements of SB 1137. However, the description is a summary and licensees are encouraged to reference the text of the law for additional requirements. Licensees seeking further guidance should consult with their compliance units or legal counsel. The department is unable to provide specific guidance regarding the interpretation of any provision. The text of the legislation may be accessed at: http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb_1101-1150/sb_1137_bill_20080708_chaptered.pdf.